

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2889 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARSHINBHAI AMARABHAI MAKWANA

Versus

COMMISSIONER OF POLICE, OFFICE OF COMMISSIONER OF POLICE

Appearance:

MR MA PAREKH for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on 25-3-1999 detaining one Vinodbhai Narshinbhai Makwana under the provisions of the Gujarat Prevention of Antisocial Activities Act (for

short PASA Act) in exercise of powers under Section 3(1) of the PASA Act.

2. In the grounds of detention the detaining authority took into consideration the five offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration the statements of two anonymous witnesses and exercised powers under Section 9(2) of the PASA Act by claiming privilege of not disclosing the identity of these witnesses. The authority found that the statements made by these witnesses and the fear expressed by the witnesses were correct and genuine and therefore there was need for exercise of power under Section 9(2) of the PASA Act. The Detaining Authority after taking into consideration the possibility of resorting to less drastic alternative remedies came to the conclusion that the only option available is to immediately prevent the petitioner from pursuing his illegal and antisocial activities under the PASA Act and the order was passed.

3. The order is assailed by learned advocate Mr. Parekh only on the ground that the statements of the anonymous witnesses were verified by the Detaining Authority on 25-3-1999 and the order was passed on that very date. He therefore submitted that there was no time lag between the verification of the statements and the order which could not possible for the Detaining Authority to apply its mind and arrive at a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act.

4. Mr. Bukhari, learned AGP has opposed this petition. He submitted that the quickness on the part of the Detaining Authority may not be taken as non application of mind. At attempt is made by the Detaining Authority by filing an affidavit in reply to explain how the order is passed. But barring a statement to the effect that after taking into consideration the material before it and scrutinising the same the order was passed. There is nothing to indicate as to when the proposal was made by the sponsoring authority, when it was received by the Detaining Authority, when the statements were verified, when other material was verified and when the grounds of detention were prepared is not coming forth in the affidavit in reply.

5. The Detaining Authority has exercised the powers under Section 9(2) of the PASA Act and thereby has claimed privilege of not disclosing the identity of the witnesses. These powers are exercised by recording a

subjective satisfaction that the statements made by these witnesses and the fear expressed by them qua the petitioner is found to be correct.

5.1 While exercising the powers under Section 9(2) of the PASA Act, the Detaining Authority has also to keep in mind that exercise of powers under Section 9(2) of the PASA Act would deprive the detenu of his right of making an effective representation. He has therefore to consider as to what is to be given preference. Public interest and then exercise of powers under Section 9(2) of the PASA Act and the right of the detenu in exercise of powers under Section 9(2). Each case has to be judged on its own merits and the Detaining Authority has to strike a balance between the interest of the detenu on one hand and the public interest on the other.

5.2 For arriving at a subjective satisfaction the authority has to consider the truthfulness and genuineness of the fear expressed by the witnesses. The authority has also to take into consideration the material placed before it for exercising the powers both under Section 9(2) as well under Section 3(1) of the PASA Act. This entire exercise would require time. As it is seen in the instant case, the whole exercise was undertaken at one go in a single day, i.e. 25-3-1999.

6. In view of the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659, there was no time lag between the verification of the statements and the orders passed which could have possibilised for the Detaining Authority to undertake this exercise. The affidavit-in-reply also does not explain or clarify as to how this was possible.

7. There is no contemporaneous material to lend support to the statement of witnesses. This ought to have been considered by the Detaining Authority while exercising powers under Section 9(2) of PASA Act. (Chandrakant N. Patel v. State of Gujarat and Others 1994(1) GLR 761). The satisfaction arrived at by the Detaining Authority is therefore not genuine. Non-disclosure of the identity of witnesses has resulted in to infringement of the right of detenu of making an effective representation. The detention therefore would stand vitiated.

8. The petition is therefore deserves to be allowed and same is hereby allowed. The order of detention impugned is quashed and set aside. The petitioner-detenu Vinodbhai Narshinbhai Makwana of Ahmedabad be set at

liberty forthwith if not required in any other case.
Rule is made absolute. No costs.

(A.L. Dave, J)